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TB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauwirth	2267.398US03	6639

7590 07/29/2003

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
	3727

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

<b>Advisory Action</b>	<b>Application N .</b>	<b>Applicant(s)</b>
	09/960,606	RAUWORTH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Stephen J. Castellano	3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 29 January 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3.  Applicant's reply has overcome the following rejection(s): 112, 2<sup>nd</sup> paragraph rejections.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-15.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_

  
Stephen J. Castellano  
Primary Examiner  
Art Unit: 3727

Continuation of 2. NOTE: For at least the reason that independent claims 1, 6 and 11 would include the added language "wherein the chime, the top wall, and the cylindrical wall are integrally molded so that there are no welded portions connecting the chime with the top wall or the cylindrical wall, and so that there are no welded portions connecting the top wall with the cylindrical wall" which has not been considered previously. The proposed amendment further complicates the issues for appeal.

Continuation of 5. does NOT place the application in condition for allowance because: The request for reconsideration is denied since it request reconsideration in view of the amendment after Notice of Appeal. This amendment seems to raise issues which would further complicate the appeal since the amendments include language not previously considered. As for the previously filed Declarations, only one discusses commercial success (Declaration filed by Don Brettingen on August 13, 2002) and it is conclusionary and doesn't provide enough evidence to substantiate commercial success. The other two declarations seem to substantiate evidence of an infringing device use to establish the Special status of this application.